

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRENDA ROBINSON-STOWE,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
THE SCHOOL DISTRICT	:	
OF PHILADELPHIA, et al.,	:	No. 13-6907
Defendants.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Schiller, J.

December 9, 2014

Brenda Robinson-Stowe is a school police officer for the School District of Philadelphia (“the District”). She claims that she has sought promotions to sergeant and lieutenant but she has yet to be promoted as a result of the District’s gender discrimination. She also claims that the District retaliated against her because she complained about the gender discrimination against her. The Court conducted a bench trial on September 22 and 23, 2014. The Court also permitted the parties to revise their suggested findings of fact and conclusions of law. Based on the arguments made prior to and during the trial, as well as the trial testimony of numerous witnesses, one factual issue emerged as fatal to Robinson-Stowe’s claim if the Court decided that issue against her. Namely, did Robinson-Stowe decline a promotion that had been offered to her in 2007? The Court answers that question in the affirmative. Accordingly, the Court, pursuant to Federal Rule of Civil Procedure 52(a), and based on the findings of fact and conclusions of law entered below, enters judgment in favor of the District and against Robinson-Stowe on both her gender discrimination and retaliation claims.

I. FINDINGS OF FACT

A. Gender Discrimination

Robinson-Stowe began her career with the Philadelphia School District in October of 2003, following a stellar career as police officer for the City of Philadelphia. (Sept. 22, 2014 Hr’g Tr. at 6-7.) Dexter Green, who worked for the Philadelphia Police Department as the executive chief inspector of the traffic division, asked Robinson-Stowe and another officer to create a background unit for the District. (*Id.* at 9.) The background unit would review candidates for positions within the district. (*Id.*) The background unit never came to fruition, but Robinson-Stowe was tasked with visiting high schools to review their security procedures and make recommendations regarding school safety and security. (*Id.* at 9.) Eventually, she served in the juvenile intelligence unit located at the Frankford Arsenal. (*Id.* at 10-11.) As part of that unit, she did not wear a uniform or carry a badge. (*Id.* at 11.) “[I]f you’re a Juvenile Intelligence Officer you want to be undercover, so that people don’t know who you are.” (*Id.* at 12.) Robinson-Stowe remained in the special assignment until 2010. (Jt. Pretrial Stip., Agreed Facts ¶ 9.) According to James Golden, the former Deputy Chief of School Operation/Chief Safety Executive, Robinson-Stowe’s placement in the juvenile intelligence unit and the school intervention unit were “special assignments,” in which she was not assigned to a particular school and was not required to report to a sergeant or lieutenant. (Sept. 23, 2014 Hr’g Tr. at 5-7.) Golden termed her special assignments “perhaps even privileged, because [they were] so unique and extraordinary.” (*Id.* at 8.) If Robinson-Stowe was promoted to sergeant, she would be required to relinquish her special assignments because sergeants were assigned to specific schools. (*Id.* at 9-10.)

In 2007, Chief Golden told Robinson-Stowe that he wanted her to take the upcoming oral

exam for acting sergeant. (Sept. 22, 2014 Hr’g Tr. at 14.) Although the responsibilities for the acting sergeant and sergeant positions were the same, the acting sergeant position was a temporary one, whereas sergeant was a permanent position. (*Id.* at 153-54, 171.) According to Robinson-Stowe, Chief Golden requested that she sit for the exam because he “knew we didn’t have any females, so it only made sense.” (*Id.* at 15.) Golden testified that he encouraged Robinson-Stowe to take the acting sergeant exam in an effort “to build a robust management group” composed of competent and diverse individuals. (Sept. 23, 2014 Hr’g Tr. at 13.) Because Robinson-Stowe wished to eventually become a lieutenant for the additional pay and overtime opportunities, she took the acting sergeant exam. (September 22, 2014 Hr’g Tr. at 15-17.)

According to Robinson-Stowe, she was told by a training officer that she and a male candidate scored “really high” on the exam and was asked if she wanted to be “number one or two” on the list. (*Id.* at 17.) Robinson-Stowe testified that after that encounter with the training officer, Robinson-Stowe never heard anything more nor she did she see the list. (*Id.* at 17-18.)

The acting sergeant list for the exam for which Robinson-Stowe sat was an exhibit at trial. The “personnel eligible” list for the position of Acting School Police Sergeant that Robinson-Stowe applied for ranks fifteen individuals based on their score. Robinson-Stowe’s score made her the highest ranking woman on the list, and placed her at second overall. The remaining females on the list after Robinson-Stowe were ranked ninth, tenth, and eleventh. (Def.’s Ex. 18 [Acting Sergeant List].) The Acting Sergeant List contained a number of handwritten remarks. For instance, it noted that a number of the candidates accepted their promotions. (*Id.*) The Acting Sergeant List also noted that one candidate declined and subsequently retired, one candidate declined but was recontacted and accepted, and one candidate could not be located. (*Id.*) There was no remarks regarding some of the

candidates, including two of the females on the list. (*Id.*) As for Robinson-Stowe, the only remarks were “declined” in one column and “12/14/07” in another column.” (*Id.*)

During the trial, Robinson-Stowe was adamant that she never declined the position of acting sergeant. (Sept. 22, 2014 Hr’g Tr. at 53-54; 69-72.) In fact, she testified that she began inquiring about the position in the spring and was told that there was no money in the budget. (*Id.* at 18.) And when she saw John Augustine with stripes on his uniform that indicated a promotion, she claimed that she complained to the president of the union, Michael Lodise, that there were still no female supervisors. (*Id.* at 18-19.) Robinson-Stowe filled out a grievance referencing the acting sergeant position and complaining about the lack of female supervisors. (Def.’s Ex. 54 [2008 Grievance].)

Michael Peterman worked as a personnel assistant for the district and was tasked with hiring and firing duties. (Sept. 22, 2014 Hr’g Tr. at 167.) He made the notations on the Acting Sergeant List, including the notation that Robinson-Stowe declined the promotion to acting sergeant. (*Id.* at 168.) He asked Robinson-Stowe if she wanted an acting sergeant position, and she responded that she did not want the position. (*Id.* at 169.) He informed her that the acting sergeant job was “an opportunity to work in the position that she had obviously qualified for, the acting position, until such time as she could be appointed to regular sergeant.” (*Id.*) Peterman claimed that he pressed Robinson-Stowe multiple times about the job and that “he was going to move on to the next candidate if she didn’t give a definitive answer.” (*Id.*) According to Peterman, her answer was “no, specifically and categorically.” (*Id.*) Peterman reported that the individuals who had initially declined the acting sergeant position but accepted the promotion after being recontacted had asked Peterman to recontact them about the acting sergeant position. (*Id.* at 170-71.) He did not, however, recontact Robinson-Stowe because she “was definitive and specific that she was not interested.” (*Id.* at 172.)

Peterman speculated that she turned down the acting sergeant promotion because she wished to be a full sergeant. (*Id.* at 176-77.)

Peterman was a reluctant witness and his demeanor was somewhat testy. If the only evidence that Robinson-Stowe declined the promotion came from Peterman, the Court might be more inclined to find that Robinson-Stowe never declined the promotion offer. However, there is additional testimony that supports Peterman's version of the events. Joanne Carmichael-Williams, a twenty-one year veteran of the District who was also a school police officer, recounted a phone conversation that she had with Robinson-Stowe. According to Carmichael-Williams, Robinson-Stowe and Chief Golden had a discussion in which she told Chief Golden that she "didn't want" the acting sergeant position because it required her to be assigned to a school. (Sept. 22, 2014 Hr'g Tr. at 193-94, 199.) Craig Johnson, the retired former commander of school police, also testified that he had a conversation with Robinson-Stowe in which she said that "her position was she did not want the position." (*Id.* at 214.) Brendan Lee, the executive director of school safety, also testified that he spoke with Robinson-Stowe about the job, and she indicated that if the position of acting sergeant required her to be assigned to a school, she did not want the job. (*Id.* at 235-36.)

The record contains no evidence that Robinson-Stowe applied for any promotion other than that of acting sergeant. Robinson-Stowe did not apply for the 2010 examination for sergeant. (*Id.* at 68.)

B. Retaliation

On a particular day in September of 2010, Robinson-Stowe was sitting in her car getting ready to go home from the Strawberry Mansion complex. (Sept. 22, 2014 Hr'g Tr. at 33.) The new chief, Myron Patterson, was holding a press conference outside. (*Id.*) A number of school police

officers greeted Patterson and shook his hand, but Robinson-Stowe left. (*Id.*) A couple of days later, Robinson-Stowe's Commander called her and told her that she was now required to wear a uniform. (*Id.*; *see also* Pl.'s Ex. 32 [Sept. 3, 2010 Memo].) Apparently, Robinson-Stowe's Commander was at a meeting with Patterson in which Patterson wanted to know about Robinson-Stowe. (Hr'g Tr. at 33.)

In another incident, on September 7, 2010, a memo from Sergeant Robert Garner to Robinson-Stowe accused her of failing to report to a specific location inside of Strawberry Mansion High School and leaving the building without informing the sergeant of her absence or her reason for failing to report. (Pl.'s Ex. 60 [Sept. 7, 2010 Memo].) The memo accused Robinson-Stowe of placing others in danger and creating an extra burden on other employees. (*Id.*) It also served as an official warning that was placed in her personnel file. (*Id.*) During the trial, Robinson-Stowe explained that her absence was the result of an order from her Commander to retrieve equipment from another school; Robinson-Stowe testified that Sergeant Garner was not privy to that order. (Sept. 22, 2014 Hr'g Tr. at 35.) Robinson-Stowe also testified that she never received the September 7, 2010 Memo. (*Id.*)

Robinson-Stowe also recounted a few more instances of alleged retaliation. Robinson-Stowe reported that she was accused of: (1) trying to steal personal correspondence from a file cabinet on February 3, 2012; (2) being under the influence of alcohol while on duty on February 1, 2012; and (3) stealing radios on February 3, 2012. (Sept. 22, 2014 Hr'g Tr. at 40-42; Pl.'s Ex. 56 [Feb. 4, 2012 Stowe email].) Finally, according to a memo dated February 3, 2012, Robinson-Stowe was reassigned to Strawberry Mansion High School. (Pl.'s Ex. 57 [Feb. 3, 2012 Memo].) Robinson-Stowe testified that in reality, she was transferred to Spruance, a school with 1500 students but only

one school police officer. (Sept. 22, 2014 Hr’g Tr. at 43-44.)

Michael Whalen, the Philadelphia School District Director of Police Operations, was responsible for reassigning Robinson-Stowe to Spruance. (*Id.* at 150.) He testified that the per diem officer assigned to Spruance was discharged, that Strawberry Mansion had adequate personnel, and therefore, he reassigned Robinson-Stowe to Spruance. (*Id.* at 150, 161.) He also testified about the accusation that Robinson-Stowe was working while under the influence. Robinson-Stowe was not tested for alcohol because the supervisor who evaluated her determined that she was not inebriated and deemed further testing unnecessary. (*Id.* at 152, 157.)

II. CONCLUSIONS OF LAW

A. Discrimination

The Court examines Robinson-Stowe’s Title VII and Pennsylvania Human Relations Act claims under the framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03 (1973). *See Burton v. Teleflex Inc.*, 707 F.3d 417, 425-26 (3d Cir. 2013); *Atkinson v. Lafayette Coll.*, 460 F.3d 447, 454 (3d Cir. 2006) (“To prevail on a claim for sex discrimination under Title VII or its analogous provision in the PHRA, [the plaintiff] must satisfy the three-step burden-shifting inquiry under *McDonnell Douglas Corp. v. Green*.”). Plaintiff must first make out a prima facie case of discrimination. *See Scheidemantle v. Slippery Rock Univ. State Sys. of Higher Educ.*, 470 F.3d 535, 539 (3d Cir. 2006); *Pivrotto v. Innovative Sys., Inc.*, 191 F.3d 344, 352 (3d Cir. 1999). Once the prima facie case is established, the burden of production shifts to the defendant, which must offer evidence sufficient to support a determination that it carried out the adverse employment action for a legitimate, non-discriminatory reason. *Kautz v. Met-Pro Corp.*, 412 F.3d 463, 465 (3d Cir. 2005).

If a defendant meets its burden, a plaintiff must then submit evidence “from which a factfinder could reasonably either (1) disbelieve the employer’s articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer’s action.” *Id.* (citations omitted).

To state a prima facie case for gender discrimination, the plaintiff must: (1) be a member of a protected class; (2) be qualified for the position; and (3) suffer an adverse employment decision “under circumstances that give rise to an inference of unlawful discrimination.” *Tex. Dep’t of Comm. Affairs v. Burdine*, 450 U.S. 248, 253 (1981). The requirements of a prima facie case are flexible; indeed, in a gender discrimination case, the plaintiff can make out a prima facie case even if he or she was not replaced by someone of the opposite gender. *Pivrotto*, 191 F.3d at 357.

Robinson-Stowe cannot make out a prima facie case for gender discrimination because she did not suffer an adverse employment action, let alone an adverse employment decision under circumstances that allow for an inference of unlawful discrimination. The Court listened to the testimony of the witnesses and concludes that Robinson-Stowe declined the acting sergeant promotion offered to her. Though Robinson-Stowe vehemently denied declining the promotion, a number of witnesses testified to the contrary. If the District had only presented the testimony of Peterman on this point, who was reluctant to testify and displayed a hostile demeanor on the stand, the Court might have found differently. But the District presented other witnesses who testified credibly that Robinson-Stowe did not want the acting sergeant position. She was content with her position and did not want a temporary position that required her to be assigned to a specific school. Moreover, there is nothing in the record to suggest that the list that noted Robinson-Stowe declined the promotion was falsified. Thus, the evidence in this case, though not uncontroverted, leads this

Court to believe that Robinson-Stowe rejected the offered promotion to acting sergeant. Robinson-Stowe did not suffer an adverse employment decision and she cannot make out a prima facie case of discrimination. Therefore her gender discrimination claim fails.

Similarly, Robinson-Stowe cannot recover for not being promoted to sergeant or lieutenant because she never applied for these jobs. *See Hill v. Potter*, 625 F.3d 998, 1003 (7th Cir. 2010) (“Failure to promote can be an adverse action giving rise to liability, but the plaintiff must first show that she properly applied for the position.”). Absent some evidence from Robinson-Stowe that applying for a promotion would have been futile—of which there is none in this record—she cannot state a prima facie case for gender discrimination. *See Lavigne v. Cajun Deep Founds., LLC*, Civ. A. No. 12-441, 2014 WL 3420778, at *13 (M.D. La. July 10, 2014) (holding that failure to apply for a position forecloses failure claim for to promote).

B. Retaliation

Title VII prohibits employers from discriminating against “any individual . . . because he has opposed any . . . unlawful employment practice” under Title VII, or because he has “made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing” pursuant to Title VII. 42 U.S.C. § 2000e–3(a). To establish a prima facie case of retaliation, a plaintiff must show that: (1) she engaged in activity protected by Title VII; (2) the employer took a materially adverse employment action against her; and (3) there was a causal connection between the participation in the protected activity and the adverse employment action. *Moore v. City of Phila.*, 461 F.3d 331, 340-41 (3d Cir. 2006). An adverse employment action is one that “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). Because Title VII is not “a general civility

code . . . [a]n employee's decision to report discriminatory behavior cannot immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience." *Id.* To satisfy the causation prong, the plaintiff must show that the protected activity "was a but-for cause of the alleged adverse action by the employer." *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2534 (2013).

Robinson-Stowe points to a number of alleged acts of retaliation. The Court, however, considers these acts, considered both individually and taken as a whole, minor inconveniences, insufficient to be deemed adverse employment actions for purposes of a Title VII retaliation claim. *See Burlington*, 548 U.S. at 68.

The accusation that Robinson-Stowe was under the influence of alcohol while at work is not an adverse employment action because nothing came of the accusation. Whalen received information that somebody detected alcohol on Robinson-Stowe's breath. Robinson-Stowe was evaluated and the claim was deemed unfounded. It is unclear from whom this original charge originated, but there is no evidence that Whalen lied about being informed that an individual detected an odor of alcohol on Robinson-Stowe. It would have been inappropriate and reckless to ignore such an accusation. The matter was closed and no discipline or further action was taken against Robinson-Stowe.

The accusation that Robinson-Stowe was stealing files from a drawer in a file cabinet where she kept personal correspondence does not qualify as actionable retaliation. Apparently, a secretary snatched a folder from Robinson-Stowe's hand despite the fact that Robinson-Stowe had permission to use a drawer in the file cabinet and the folder contained Robinson-Stowe's personal correspondence. Again, this type of unfortunate interaction with another employee cannot be termed retaliation. The snatching of a file from Robinson-Stowe's hand could easily have been the result

of a misunderstanding or a personality conflict. It in no way altered the terms of her employment and no reasonable employee would have found this action materially adverse. *See Moore*, 461 F.3d at 341 (“[A] plaintiff claiming retaliation under Title VII must show that a reasonable employee would have found the alleged retaliatory actions materially adverse in that they well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” (internal quotation marks omitted)). The same is true of the allegation that Robinson-Stowe stole radios. This incident resulted in no discipline, formal or informal. It did not qualify as an adverse employment action.

The Court also concludes that, as a matter of law, the transfer to Spruance was not retaliation. There were no facts presented that Spruance, a school in Northeast Philadelphia that taught students in kindergarten through eighth grades, was a dangerous school for Robinson-Stowe to work at as a school police officer. (*See* Sept. 22, 2014 Hr’g Tr. at 158-59.) There is no evidence that requiring Robinson-Stowe to report to Spruance was disciplinary in nature. Moreover, the timing of the transfer is not suggestive of retaliation, and the District did not provide inconsistent reasons for the transfer. *See Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 280-81 (3d Cir. 2000) (noting that temporal proximity, ongoing antagonism, and inconsistent explanations can serve as evidence sufficient to establish the causal connection necessary for a prima facie case of retaliation).

Finally, Robinson-Stowe claims that Chief Patterson reassigned her and ordered her to be in a uniform because he “took offense to her not getting out of the car and saluting him and generally not showing him his due respect.” (Pl.’s Revised Proposed Findings of Fact & Conclusions of Law ¶ 16.) This undercuts Robinson-Stowe’s argument that this action was related to any protected activity in which she engaged. Moreover, Robinson-Stowe testified that after learning of her transfer, her Commander reported that Chief Patterson inquired who she was. (Sept. 22, 2014 Hr’g Tr. at 33-

34.) Accepting the veracity of Robinson-Stowe's testimony on this point, transferring an employee for failing to pay appropriate homage qualifies as petty. It cannot, however, be termed retaliation. Moreover, there is no evidence that Chief Patterson knew that Robinson-Stowe engaged in any protected activity and therefore she cannot show that any actions by Chief Patterson were a but-for cause of any adverse employment action.

III. CONCLUSION

Based on the evidence in this case, the Court concludes that Robinson-Stowe cannot sustain a discrimination claim or a retaliation claim against the District or any of the other named Defendants. The Court therefore enters judgment in favor of the District and against Robinson-Stowe. Pursuant Federal Rule of Civil Procedure 58, the judgment of the Court will be set out in a separate document that will be entered on the docket.

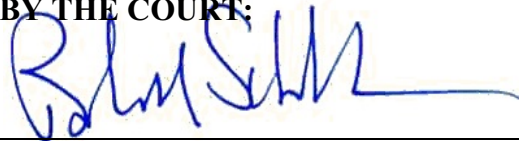
**IN THE UNITED STATES DISTRICT COURT
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Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
THE SCHOOL DISTRICT	:	
OF PHILADELPHIA, et al.,	:	No. 13-6907
Defendants.	:	

JUDGMENT

AND NOW, this 9th day of **December, 2014**, following a bench trial on September 22 and 23, 2014, and pursuant to Federal Rule of Civil Procedure 58, the Court enters judgment in favor of Defendants, the School District of Philadelphia, Myron Patterson, Brendan Lee, Michael Whalen, and Linda Cliatt-Wayman, and against Plaintiff, Brenda Robinson-Stowe, on all claims.

BY THE COURT:



Berle M. Schiller, J.